

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554
APR 8 7 35 AM 1992

DISPATCHED BY
MM Docket No. 92-67

In the Matter of

Amendment of Section 73.202(b), RM-7945
Table of Allotments,
FM Broadcast Stations.
(McRae and Nashville, Georgia)

NOTICE OF PROPOSED RULE MAKING

Adopted: March 24, 1992; Released: April 8, 1992

Comment Date: May 29, 1992

Reply Comment Date: June 15, 1992

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Tifton Radio Partnership¹ ("petitioner"), requesting the substitution of Channel 237C3 for Channel 237A at Nashville, and the modification of Station WJYF(FM)'s license accordingly. In order to accommodate the upgrade at Nashville, petitioner also requests the substitution of Channel 274A for Channel 237A at McRae, Georgia. Petitioner states its intention to apply for Channel 237C3, if allotted.

2. In support of its proposal, petitioner submits an agreement with the licensee of Station WDAX(FM), Channel 237A, McRae, Georgia, consenting to the frequency change and site relocation. Petitioner states that it will reimburse the license of WDAX, Inc., for the costs associated with relocating its station in order to accommodate the upgrade at Nashville. Therefore, we need not issue an *Order to Show Cause* to the licensee of Station WDAX(FM), since the licensee has consented to the frequency change and site relocation.

3. We believe petitioner's proposal warrants consideration because the proposed substitution would provide Nashville with a wide coverage area FM service. Channel 237C3 can be allotted to Nashville in compliance with the Commission's minimum distance separation requirements at its current licensed site provided Channel 274A is substituted for Channel 237A at McRae, Georgia. Channel 274A can be substituted for Channel 237A at McRae in compliance with the Commission's minimum distance separation requirement with a site restriction 1.3 kilometers (0.8 miles) east,² in order to avoid a short-spacing to Station WBGA(FM), Channel 273C1, Waycross, Georgia, and a proposal to allot Channel 273C1

to Brunswick, Georgia. See 5 FCC Rcd 4014 (1990). We shall also propose to modify the license for Station WJYF(FM) to specify Channel 237C3 in accordance with Section 1.420(g) of the Commission's Rules.

4. In view of the fact that Nashville, Georgia, could receive a wide coverage FM channel the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

City	Channel No.	
	Present	Proposed
Nashville, Georgia	237A	237C3
McRae, Georgia	237A	274A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before May 29, 1992, and reply comments on or before June 15, 1992, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Gary S. Smithwick
Smithwick & Belendiuk, P.C.
2033 M Street, N.W., Suite 207
Washington, D.C. 20036
(Attorney for Tifton Radio Partnership)

7. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Notice of Proposed Rule Making* to the licensee of Station WDAX(FM), as follows: WDAX, Inc., Highway 341 South, P.O. Box 1410, McRae, Georgia 31055.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from

¹ An assignment of license application (BALH-920107HG) was granted March 5, 1992, from Tift Area Radio to Tifton Radio Partnership.

² The coordinates for Channel 237C3 at Nashville are North

Latitude 31-10-18 and West Longitude 83-21-57. The coordinates for Channel 274A at McRae are North Latitude 32-04-19 and West Longitude 82-52-43.

the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial com-

ments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.